

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 W. NEEDLES AVE.
BIXBY, OK 74008
November 05, 2012 6:00 PM**

STAFF PRESENT:

Erik Enyart, AICP, City Planner
Patrick Boulden, Esq., City Attorney

ATTENDING:

Peter Janzen, Acura Neon, Inc.,
1801 N. Willow Ave., Broken Arrow,
OK 74012
See attached Sign-in Sheet

CALL TO ORDER

Meeting called to order by Chair Jeff Wilson at 6:00 PM.

ROLL CALL

Members Present: Jeff Wilson, Dave Hill, Darrell Mullins, and Larry Whiteley.
Members Absent: Murray King.

MINUTES

1. Approval of Minutes for October 01, 2012

Chair Jeff Wilson introduced the item. It was noted that there was not a quorum of those present at this meeting as were present at the October 01, 2012 meeting. A Board member asked if the Minutes could be approved anyway, and Patrick Boulden stated that they could. Erik Enyart stated that, in the past, commissions and boards had decided to approve Minutes of meetings they had not attended, if they had faith in Staff and their fellow members who were present]that they were correct.

Chair Jeff Wilson asked to entertain a Motion. Larry Whiteley made a MOTION to APPROVE the Minutes of October 01, 2012 as presented by Staff. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Whiteley, Wilson, Mullins, & Hill
NAY: None.
ABSTAIN: None.
MOTION CARRIED: 4:0:0

OLD BUSINESS

Chair Jeff Wilson asked Erik Enyart if there was any Old Business. Mr. Enyart reported that he had none. No action taken.

NEW BUSINESS

2. Action on the Applicant's request for the Board to reconsider its October 01, 2012 denial of a Variance on the following item:

BBOA-569 – Sutherland's. Discussion and possible action to approve a Variance from the 30' maximum height restriction of Zoning Code Section 11-9-21.D.1 and any other Zoning Code regulation preventing an existing ground sign from being elevated to approximately 33 feet and 8 ¾ inches in height for property in the CS Commercial Shopping Center District.

Property located: Lot 2, Block 1, *Wal-Mart Stores Addition*, Less & Except the E. 200' thereof; 15050 S. Memorial Dr.

Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Monday, October 22, 2012
RE: Report and Recommendations for:
BBOA-569 – Sutherland's (Request for Reconsideration)

LOCATION: – 15050 S. Memorial Dr.
– Lot 2, Block 1, *Wal-Mart Stores Addition*, Less & Except the E. 200' thereof
LOT SIZE: 3 acres, more or less
ZONING: CS Commercial Shopping Center District
SUPPLEMENTAL ZONING: Corridor Appearance District
EXISTING USE: A Use Unit 14 Sutherland's building materials and hardware store
REQUEST: Variance from the 30' maximum height restriction of Zoning Code Section 11-9-21.D.1 and any other Zoning Code regulation preventing an existing ground sign from being elevated to approximately 33 feet and 8 ¾ inches in height for property in the CS Commercial Shopping Center District

SURROUNDING ZONING AND LAND USE:

North: CS; The Doc's Country Mart grocery store, the Med-X pharmacy/drugstore, and other businesses in the in the Spartan Family Shopping Center strip commercial center in the Wal-Mart Stores Addition, and the abandoned Railroad Right-of-Way containing a storage shed sales lot and the Bixby Auto Sales lot to the north of that.

South: (Across 151st St. S.) CG & RS-2; The QuikTrip gasoline service station and convenience store and single-family residential in the Jim King Addition.

East: CG & CH; The Sonic Drive-In fast food restaurant, the O'Reilly Auto Parts sales business, and the Taco Bueno fast food restaurant, all in the Wal-Mart Stores Addition, with the Bixby Car Wash and AT&T Cellular World store across Memorial Dr. both zoned CH.

West: CS/IL/IM/PUD 50; Vacant commercial lots along the 151st St. S. frontage zoned CS and commercial and heavy commercial businesses zoned IL and IM in Jade Crossing and Jade Crossing II, all with PUD 50.

COMPREHENSIVE PLAN: Medium Intensity + Commercial Area + Regional Trail.

PREVIOUS/RELATED CASES: (Not necessarily a complete list)

BZ-45 – Warren Morris – Request for IH, IL, CG, & CS zoning for all of the E/2 SE/4 of this Section (80 acres, includes all of Wal-Mart Stores Addition) – Approved for IM, IL, and CS zoning only by the City Council 10/1976 (Ord. # 320).

[Final] Plat of Wal-Mart Stores Addition – Request for [Final] Plat approval for the Wal-Mart Stores Addition (includes subject property) – Planning Commission recommended Conditional Approval on 02/23/1981 and the City Council Approved 03/02/1981 (plat recorded 07/15/1981).

BBOA-263 – Jerry W. Ledford – Request for Special Exception to allow a Use Unit 18 (Sonic Drive-In) drive-in restaurant in the CS district on the E. 200' of the S. 150' of Lot 2, Block 1, Wal-Mart Stores Addition (parent tract for subject property) – BOA Conditionally Approved at a Special Meeting on 05/10/1993 after a split vote (2:2:1) at the 05/03/1993 Regular Meeting.

BL-170 – Jerry W. Ledford – Request for Lot-Split approval to split the E. 200' of the S. 150' from Lot 2, Block 1, Wal-Mart Stores Addition (parent tract for subject property) for the Sonic Drive-In fast food restaurant – PC Conditionally Approved 05/17/1993.

BL-212 – Ted Sack for Wal-Mart Stores – Request for Lot-Split approval split the E. 200' of the N. 135' from Lot 2, Block 1, Wal-Mart Stores Addition (parent tract for subject property) for the O'Reilly Auto Parts sales business – PC approved 08/26/1996.

AC-12-06-02 – Sutherlands – Request for Planning Commission approval of an LED / Electronic Message Center (EMC) ground sign for Sutherland's on the subject property – PC Approved (ratified approval of an approved Sign Permit) 06/18/2012.

RELEVANT AREA CASE HISTORY:

BACKGROUND INFORMATION:

This application was denied by the Board of Adjustment October 01, 2012. Pursuant to the City Attorney's guidance, the Applicant in this case has submitted a letter dated October 10, 2012, asking for the Board to reconsider the application. The letter presents new arguments in furtherance of their request for Variance.

If the Board approves a reconsideration, Staff will recommend the Board direct that the matter be placed on the next Regular Meeting agenda (December 03, 2012), and give notice to the Public in the same manner as was done the first time, save that it will specify that it is a request for reconsideration, and not a new application.

ANALYSIS:

Subject Property Conditions. The subject property is zoned CS and consists of Lot 2, Block 1, Wal-Mart Stores Addition, Less and Except the E. 200' thereof. The E. 200' was separated by Lot-Splits in 1993 (BL-170; Sonic Drive-In) and 1996 (BL-212; O'Reilly Auto Parts). The building on the subject property is occupied by a Use Unit 14 Sutherland's building materials and hardware store. It was formerly a Wal-Mart retail store, when Wal-Mart was the anchor tenant of the shopping center in the Wal-Mart Stores Addition. The shopping center to the north of the subject property is known as the Spartan Family Shopping Center and is under different ownership. To the northeast of the subject property is the Taco Bueno fast food restaurant on an outparcel lot platted with the Wal-Mart Stores Addition.

The subject property is relatively flat and appears to drain to the south to 151st St. S., which in turn drains to the east and to the west toward Bixby Creek.

Tests and Standard for Granting Variance. Oklahoma State Statutes Title 11 Section 44.107 and Bixby Zoning Code Section 11-4-8.A and .C together provide the following generalized tests and standards for the granting of Variance:

- Unnecessary Hardship.
- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances.
- Finding of No Substantial Detriment or Impairment.
- Variance would be Minimum Necessary.

Nature of Variance. Per AC-12-06-02 – Sutherlands, on June 18, 2012, the Planning Commission approved (ratified approval of an approved Sign Permit) an LED / Electronic Message Center (EMC) ground sign for Sutherland's on the subject property. The sign was approved and constructed for placement on the 151st St. S. frontage, just east of the subject property's driveway connection to the street. It is a single-faced sign and faces east toward the 151st St. S. and Memorial Dr. intersection, tilted slightly to the south. It was approved for construction at the 30' maximum height restriction of Zoning Code Section 11-9-21.D.1.

A portion of the pylon extends above the EMC sign element, presumably allowing for its elevation.

The Applicant is requesting a Variance from the 30' maximum height restriction of Zoning Code Section 11-9-21.D.1 and any other Zoning Code regulation preventing an existing ground sign from being elevated to approximately 33 feet and 8 ¾ inches in height for property in the CS Commercial Shopping Center District.

General. *The application form does not itself include arguments, but rather points to a submitted narrative, an undated letter from Chris Jones, Controller for Sutherland Lumber & Home Center, Inc. Without specifically identifying which statements are meant to address the different tests and standards for granting Variance, the Applicant's narrative provides:*

"Store signage has been proven to be one of the most effective methods of promoting that brand. The ability to be able to effectively identify our stores, through maximizing signage opportunities, continues to have a direct correlation in enabling our stores to fully service the local market.

We believe that having this new pylon at the proposed height would have great benefits at the location mentioned above. In addition the EMC would also benefit the community itself [by] providing local time, date and current temperature and could be helpful w/ providing Amber alert information.

We request that you allow a variance so that we may place an illuminated pylon sign with EMC located at the new desired height. Please advise our national sign supplier listed below of your decision on this matter."

Although the submitted narrative does not appear to make this claim, Staff would expect that the Applicant may describe concerns for the visibility of the EMC sign to stopped traffic at the 151st St. S. and Memorial Dr. intersection. The view may be somewhat hindered by the storage building (for sale) located in front of and just below the sign.

The subject property would have street frontage and thus the ability to place a ground sign on Memorial Dr., which has a much higher traffic count than 151st St. S., had the two (2) outparcels not been split and sold in the 1990s.

During the Public Hearing and consideration of this application at the meeting, the Board may wish to ask the Applicant for claims along these lines of argumentation.

Staff Recommendation. *The Board must find that the provided arguments are adequate for the justification of Variance in accordance with the tests and standards provided in State Statutes and the Bixby Zoning Code.*

If the Board approves a reconsideration, Staff will recommend the Board direct that the matter be placed on the next Regular Meeting agenda (December 03, 2012), and give notice to the Public in the same manner as was done the first time, save that it will specify that it is a request for reconsideration, and not a new application.

Erik Enyart stated that the Applicant had submitted new statements of fact in their letter asking for reconsideration, and if the Board voted to reconsider the application, it may consider those arguments at the December 03, 2012 meeting, in addition to any other arguments or information submitted by that time. Mr. Enyart stated that, if approved for reconsideration, he would advertise the Public Hearing in the same manner as was done for the application originally.

Dave Hill stated that he was waiting in traffic in front of the *Sonic* restaurant and could not see the sign for *Sonic's* facility.

Larry Whiteley stated that he was not at the previous month's meeting, but if he had been, he would have pointed out that *QuikTrip's* sign was a whole lot higher than what was being proposed. Mr. Whiteley stated that the Applicant was only requesting three (3) additional feet or a little more. Mr. Whiteley stated that he would have voted for the application if he were present at the previous meeting.

Chair Jeff Wilson asked to entertain a Motion. Murray King made a MOTION to DENY BBOA-569. Chair Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Whiteley, Wilson, Mullins, & Hill
NAY: None.
ABSTAIN: None.
MOTION CARRIED: 4:0:0

Upon a request for clarification, Erik Enyart stated that what the Board had just done was approve a request to reconsider the application at the next month's meeting. Mr. Enyart stated that the Board, at that meeting, will be asked to reconsider the application in light of the new facts presented in the Applicant's letter and those facts to be presented between now and then.

Larry Whiteley discussed his reasoning for voting in favor of the application.

Chair Jeff Wilson admonished Peter Janzen, *Acura Neon, Inc.*, 1801 N. Willow Ave., Broken Arrow, OK 74012, to be prepared at the next meeting.

Erik Enyart noted that, in addition to the *QuikTrip* sign, other tall area signs included the one for the Spartan Family Shopping Center and the Apple Market sign, advertising what used to be the old Doc's grocery store, located just east of City Hall.

ADJOURNMENT

Chair Jeff Wilson made a MOTION to ADJOURN. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Whiteley, Wilson, Mullins, & Hill
NAY: None.
ABSTAIN: None.
MOTION CARRIED: 4:0:0

The meeting was Adjourned at 6:08 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary